

Exhibit 2

Excerpts of Personal Deposition of S. Miltenberger
December 15, 2023

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TNT AMUSEMENTS, INC.,)
)
Plaintiff,)
) Cause No.
vs.) 4:23-cv-330
) JAR
TORCH ELECTRONICS, LLC, et al.,)
)
Defendants.)

VIDEO DEPOSITION OF STEVEN MILTENBERGER
Taken on behalf of the Plaintiff
December 15, 2023

Sheryl A. Pautler, RPR,
MO-CCR 871, IL-CSR 084-004585

(The proceedings began at 9:21 a.m.)

1 me -- tell me what your wife's role --

2 A. That is correct.

3 Q. -- prior -- prior to Torch Electronics.

4 A. Prior to Torch Electronics, she was -- she
5 sold 31, which is a product that -- sells bags. So
6 she did that.

7 Q. Okay. So when you started Torch
8 Electronics, I presume you -- well, what's the first
9 thing you did when you started Torch Electronics?
10 Did you open a bank account? Did you file papers
11 with the secretary of state? How'd you go about
12 starting the company?

13 A. When we -- when I started Torch
14 Electronics, I had our attorney set up an LLC.

15 Q. Okay. When you set up the LLC, were you
16 the sole member of that LLC?

17 A. That's correct.

18 Q. Are you still the sole member today?

19 A. I am the majority owner of Torch
20 Electronics.

21 Q. Okay.

22 A. I own 51 percent.

23 Q. Okay. Who owns the other 49 percent?

24 A. The other 49 percent is set up in a trust.

25 Q. Okay. Is that a trust for the benefit of

1 separate accounting of their revenues, profits,
2 costs, etc.?

3 A. Yes.

4 Q. Are there any cost-sharing relationships
5 or agreements between the two companies?

6 A. No.

7 Q. What title do you hold with Torch
8 Electronics, Missouri?

9 A. The manager, president.

10 Q. Okay. What title do you hold with Torch
11 Electronics, Tennessee?

12 A. The manager and president.

13 Q. Okay. Can you estimate how much of your
14 time is spent on work for Torch -- by your time, I
15 mean your work time. How much of your time at work
16 is spent on work for Torch, Missouri versus Torch,
17 Tennessee?

18 A. As a percentage?

19 Q. Yes. As of today.

20 A. Torch Tennessee is, I would approximate it
21 at 10 to 20 percent.

22 Q. Okay. Is Torch, Tennessee a newer company
23 than Torch, Missouri?

24 A. It is.

25 Q. When was Torch Tennessee brought into

1 A. Yes.

2 Q. Is the other employee your wife, Sandra
3 Miltenberger?

4 A. For Torch, Missouri, yes.

5 Q. Okay. I understand that the remainder of
6 individuals who work for Torch Electronics, Missouri
7 are independent contractors; is that correct?

8 A. That is correct.

9 Q. Are there any independent contractors who
10 work for Torch, Missouri who also work for Torch,
11 Tennessee?

12 A. No.

13 Q. Okay. All right. So let's talk then a
14 little bit about those independent contractors. So
15 can you tell me what sort of job functions any
16 independent contractors employed -- let me say, I'm
17 going to leave Torch, Tennessee behind. So from
18 here on out if I say Torch, I'm referring to Torch,
19 Missouri. Is that understood?

20 A. Yes.

21 Q. Okay. So in terms of Torch, Missouri,
22 obviously we discussed there's a number of
23 independent contractors that Torch, Missouri
24 employs. Can you tell me generally what sorts of
25 roles those independent contractors carry out on

1 Q. Okay. Where is your warehouse located?

2 A. It's in Chesterfield.

3 Q. Chesterfield Valley, I think your wife
4 told me?

5 A. That's correct.

6 Q. And we said Banilla is located in North
7 Carolina. Is that also the place from which they
8 would ship the devices to you?

9 A. The majority of the devices that we
10 receive from Banilla come from Wisconsin.

11 Q. Okay. Do you know why that is? Why --
12 why is Banilla operated in Wisconsin?

13 A. Banilla -- I'm not sure. Banilla has a
14 warehouse in Wisconsin.

15 Q. Okay. So you listed the independent
16 contractors that -- the types of independent
17 contractors that Torch employs -- doesn't employ,
18 but independently contracts with. Roughly, how many
19 auditors does Torch have today?

20 A. I believe Torch has over 50 auditors, from
21 what I know -- over 50. I'm not sure of the exact
22 number.

23 Q. That's good enough.

24 A. Right.

25 Q. How many people with the title

1 technicians -- technician -- excuse me -- does Torch
2 have, again roughly? It doesn't need to be an exact
3 number.

4 A. The independent contractors as
5 technicians, Torch has over 15.

6 Q. All right. We talked about installation
7 and pickup, but I don't have the impression that
8 there are individuals whose sole responsibilities
9 are those. Are there other independent contractors
10 that we haven't mentioned among the group of
11 technicians and auditors?

12 A. I mean, there are -- what do you mean by
13 "other"? So there's --

14 Q. Well, what I mean is that I understand
15 from what you told me a moment ago, there's roughly
16 more than 50 people who have the title auditor and
17 roughly more than 15 who have the title technician.
18 I'm asking if there any other job titles among your
19 independent contractors?

20 A. With the independent contractors, we have
21 some who enter data. So some who enter -- one who
22 enters information. We have some who -- some who
23 are -- who work and help with those independent
24 contractors in certain -- certain areas. They are
25 still technicians. They're still auditors. So

1 they're still doing those roles. So, yeah.

2 Q. Okay. Is there anybody among the
3 independent contractors who has a supervisor
4 responsibility over other independent contractors?

5 A. Define "supervisory." How would you
6 define that?

7 Q. Well, does some -- is there any
8 independent contractor who reports to another
9 independent contractor?

10 A. I don't know that they report directly.
11 They help -- their role is help facilitate those
12 independent contractors.

13 Q. Okay. So among those individuals that we
14 just mentioned, what generally are the
15 qualifications or background of the individuals that
16 you hire as -- as independent contractors who have
17 the title of auditor?

18 A. As far as the qualifications that they
19 would have, I mean there are not -- I mean typically
20 with auditors and with techs, we -- you know, there
21 are -- you know, a lot of it comes through friends
22 of friends. But initially, a lot of times, we look
23 for police officers and first responders to help
24 with the -- with the audits.

25 Q. And when you say police officers and first

1 understood the agreement to be that you would make
2 with the amusement location owners. Is it that you
3 would be leasing the game to them and putting it on
4 their premises? Would it be that you would be
5 leasing space from the owner to place the game?
6 What understanding, if any, did you have as to
7 what -- what the relationship was between you and
8 the owners of any of these establishments?

9 MR. CRAIG: Object to form. Calls for a
10 legal conclusion.

11 Q. (By Mr. Finneran) You can answer.

12 A. The understanding we had as far as the
13 placement of the games is a license agreement where
14 we were licensing the space from the location to
15 place our games.

16 Q. Okay. So you mentioned when you were
17 talking about the discussions you would have with
18 owners, that you would describe the games as being
19 No Chance Games. I think I know what that term
20 means. But can you explain to me how you would
21 explain that term to any -- any person you'd be
22 pitching to take the machines into their location?

23 A. I mean, as far as the location is
24 concerned, the games and the way that they operated
25 as far as Missouri law is concerned, there were

1 three elements that -- that are involved;
2 consideration, chance and prize. I would explain to
3 them that, you know, by removing one of those
4 elements, the game is -- is a -- by removing one of
5 those elements, the game complies with the law.

6 The game operates, you know, as far
7 as the operation is concerned, it has a prize viewer
8 feature that allows for the player to see the prize
9 before any money is put into the game, as well as
10 any play after, the player is able to see that next
11 play.

12 In addition to that, I would describe
13 the games as a -- also having a predetermined set of
14 events in a finite pool that would go through that
15 finite pool and that static script. And then it
16 would repeat after that. The script itself does not
17 shuffle. There isn't a random number generator in
18 the machine. And so when it is done with those --
19 that sequence of outcomes, it starts back over at
20 outcome number one. That is how I describe the
21 games.

22 Q. Would you ever receive questions from the
23 people that you were pitching as to whether the
24 machines were, in fact, legal devices?

25 A. Would I receive questions from them during

1 event not under his or her control or influence.

2 That's what the footnote says.

3 MR. FINNERAN: Okay. We will move on.

4 I will hand you what I'm marking as STM 3.

5 (Whereupon the reporter marked
6 Exhibit 3 for identification.)

7 THE WITNESS: Thank you.

8 Q. (By Mr. Finneran) First, do you recognize
9 the language in this document?

10 A. Yes.

11 Q. Is this language that once appeared on the
12 Torch Electronics' website?

13 A. I can't remember that.

14 Q. Okay. Well, I will ask you to assume that
15 it is, and proceed on that basis.

16 Do you know who is the author of any
17 of the text that is on this document.

18 A. I can't remember that. Who -- I can't
19 remember who is the author.

20 Q. Okay. Did you have any hand in authoring
21 any of the text in this document?

22 MR. CRAIG: Object to form.

23 A. I don't remember.

24 Q. (By Mr. Finneran) Okay. So I think you
25 said you don't recall whether all of the text here

1 was once on Torch's website. Where else do you
2 recall seeing any of this text?

3 A. I don't remember.

4 Q. Okay. If you look on the second page of
5 the document, do you see where it says about
6 Missouri's No Chance Game machines, NCGs?

7 A. Yes.

8 Q. Below that, do you see where it says:
9 Torch's No Chance Game machines are legal?

10 A. Yes, I see that.

11 Q. Below that, do you say -- see where it
12 says: Torch's No Chance Game machines are
13 innovative non -- excuse me -- are an innovative,
14 non-gambling game machine?

15 A. I see that, yes.

16 Q. So I know you say you don't recall whether
17 all this text was on Torch's website. Do you recall
18 if that language appeared at any time on Torch's
19 website?

20 A. I don't remember that.

21 Q. Do you recall these statements, that
22 Torch's No Chance Game machines are legal and that
23 Torch's No Chance Game machines are innovative
24 non-gambling game machines.

25 Do you recall those being statements

1 that appeared on any promotional or other materials
2 created by Torch?

3 A. I don't remember.

4 Q. Okay. Did Robert Cantwell -- was that
5 Robert Cantwell? Did Robert Cantwell have any role
6 in drafting any of the language that we see on STM
7 3?

8 A. I don't remember that.

9 Q. Did any other attorney to your knowledge
10 have any role in drafting any of the rest of the
11 language that appears on STM 3?

12 A. I don't remember.

13 Q. Okay. If you look in -- to the third page
14 of the document, it says: Torch has over 600 No
15 Chance Game machines placed throughout Missouri in
16 convenience stores, restaurants, bars, fraternal
17 organizations and other retail sites. These
18 machines provide entertainment for thousands of
19 users and provide a meaningful alternative source of
20 income for both large and small businesses seeking
21 to diversify their revenue streams.

22 First, did I read that correctly?

23 A. Yes.

24 Q. That first sentence, that Torch has over
25 600 No Chance Game machines placed throughout

1 Missouri in convenience stores, restaurants, bars,
2 fraternal organizations and other retail sites, is
3 that statement true today?

4 A. Yes.

5 Q. How many more devices than 600 does Torch
6 have throughout Missouri at such locations as of
7 today?

8 A. I don't remember.

9 Q. Does Torch have more than 1,000 such
10 devices today?

11 A. Yes, I believe so.

12 Q. Does Torch more -- have more than 2,000
13 such devices as of today?

14 A. I'm not sure.

15 Q. Okay. It then says that these machines
16 provide entertainment for thousands of users.

17 Do you believe that on an annual
18 basis, more than 2,000 users play Torch's games as
19 of, let's say, the year 2022?

20 A. I'm not sure. I don't know.

21 Q. Okay. If you look down to the bottom, it
22 says: No Chance Game machines support Missouri's
23 Veterans and the state's nonprofits.

24 It says: Torch Electronics works
25 hard to support, promote and award Veteran's

1 recognize the text in this document?

2 A. I've seen the text before, yes.

3 Q. Okay. Do you recognize this to be text
4 that once appeared on the Torch Electronics website?

5 A. I don't remember that.

6 Q. Okay. Well, I will make a couple
7 representations to you and let you disagree with me
8 if you don't think it's true. But if you'll compare
9 this to STM 3 which you had a moment ago.

10 A. Okay.

11 Q. Just have them both in front of you.
12 Yeah, thank you.

13 I'll represent to you that the first
14 document, STM 3, reflects a -- how the Torch website
15 appeared as of early September 2022. And the
16 second, Exhibit STM 4, represents how it appeared in
17 late September 2022. Are you aware of any change
18 taking place to the Torch Electronics website in the
19 month of September 2022?

20 A. I can't remember.

21 Q. Do you recall changes being made to the
22 Torch website at any time?

23 A. I don't remember.

24 Q. Okay. Do you recall ever giving an
25 instruction to -- well, let me ask this: Who

1 manages the Torch website on any continuous basis?

2 A. The Torch website is managed by
3 Swizzlestick Studios.

4 Q. Okay. And are you able -- or when I say
5 you, are you Steven Miltenberger able to make
6 changes to the Torch website without Swizzlestick's
7 assistance?

8 A. No.

9 Q. Is your wife, Sandra, able to make changes
10 to the website without Swizzlestick's assistance?

11 A. No.

12 Q. Is any independent contractor of Torch
13 able to make changes to the website without
14 Swizzlestick's assistance?

15 A. No.

16 Q. Therefore, is it the case that in order
17 for the Torch website to be changed, Swizzlestick
18 would have to be involved in that process?

19 A. That's correct.

20 Q. Okay. Do you recall at any point
21 providing an instruction to Swizzlestick to make
22 changes to the Torch website?

23 A. I don't remember.

24 Q. Okay. So there were several
25 representations on the Torch website prior to

1 September 2022 reflected in STM 3 that do not appear
2 in STM 4. Do you recall any reason why you would
3 have believed that any statement should be removed
4 from the Torch website?

5 MR. CRAIG: Object to form.

6 A. I don't remember.

7 Q. (By Mr. Finneran) Do you recall ever
8 having a concern that any statements on the Torch
9 website were not accurate?

10 A. I don't remember that.

11 Q. When you say you don't remember, do you
12 mean that you are confident that you never had such
13 a concern or that you simply can't recall whether
14 you had such a concern?

15 A. I am confident that I don't remember,
16 yeah.

17 Q. Okay. Fair enough.

18 Some of this may just be, as we
19 talked about before, setting up some questions that
20 may be asked to you in future dialogue when you've
21 had an opportunity to prepare with some of the --
22 with knowing some of the things we're looking for.
23 So I don't prejudice your failure of memory today,
24 but that's why I have to ask the questions.

25 MR. CRAIG: When -- it's noon now. I

1 those Torch devices -- hold on. Strike that.

2 Okay. So, yes. For each of the
3 Torch devices, as I have defined that term, do you
4 agree that the device selects where to begin the
5 sequence through a random process.

6 MR. CRAIG: Object to form.

7 A. I don't believe there's anything random
8 about the game from my understanding.

9 Q. (By Mr. Finneran) How do you understand
10 that a Torch device selects where to begin producing
11 outcomes among the sequentially ordered outcomes in
12 that list or pool?

13 MR. CRAIG: Object to form.

14 A. I don't know that.

15 Q. (By Mr. Finneran) Okay. Have you reviewed
16 expert reports produced by Nick Farley in the past?

17 A. I have.

18 Q. Have you familiarized with those --
19 familiarized yourself with those reports in the
20 course of your work at Torch?

21 MR. CRAIG: Object to form.

22 A. I have looked at the -- at the reports,
23 yes.

24 Q. (By Mr. Finneran) Okay. When we talked a
25 moment ago about there being a list of predetermined

1 We talked about how the devices have
2 programmed into them a -- it's a long phrase, but
3 predetermined list of sequentially ordered outcomes.
4 Is that correct?

5 A. Each game has a, yes, set of predetermined
6 outcomes.

7 Q. How is that list generated?

8 A. I'm not sure.

9 Q. Is it generated by Torch?

10 A. No.

11 Q. Is it generated by Banilla?

12 A. I'm not sure.

13 Q. Is it generated randomly by the device?

14 MR. CRAIG: Object to form, calls for
15 expert testimony.

16 A. Yeah, I don't know that.

17 Q. (By Mr. Finneran) Is it generated by the
18 device at all?

19 MR. CRAIG: Object to form, calls for
20 expert testimony, asked and answered.

21 A. I don't know.

22 Q. (By Mr. Finneran) Well, don't you have a
23 belief that it is -- that the device contains a
24 predetermined finite pool of sequentially ordered
25 outcomes and that the device does not thereby

1 generate those outcomes?

2 MR. CRAIG: Object to form.

3 A. The device has a predetermined set of
4 outcomes, that's correct.

5 Q. (By Mr. Finneran) Okay. But is it your
6 testimony you're unaware of how that predetermined
7 list is created?

8 A. Correct.

9 Q. If it turned out that that list was
10 generated through a randomized computer process,
11 would that change your view as to whether or not an
12 element of chance exists in the game?

13 MR. CRAIG: Object to form, calls for
14 expert and legal testimony and opinion.

15 A. I don't know.

16 Q. (By Mr. Finneran) Am I correct that
17 whether a player uses the prize viewer feature on a
18 Torch device or not, the next outcome of the game
19 will be the same?

20 A. Whether the player chooses to look at the
21 outcome or not, that's correct, the outcome is the
22 same.

23 Q. Have you submitted the Torch devices in
24 the past to testing?

25 MR. CRAIG: Object to form.

1 and you'll remind me the name of the group I'm sure,
2 but that you've hired a lobbying group associated
3 with Steve Tilley to do lobbying for Torch in the
4 past. Are there any other groups that you've hired
5 to do lobbying in the past?

6 A. In the -- we have hired -- the company is
7 Palm Strategic, I think. I can't remember exactly.

8 Q. Okay.

9 A. And another company is Atlas something. I
10 can't remember the names.

11 MR. FINNERAN: Okay. Actually, I was
12 going to ask this question. I think it will
13 fall outside of our agreement so I will not ask
14 the question.

15 MR. CRAIG: I appreciate it.

16 Q. (By Mr. Finneran) With respect to the
17 activities that your various lobbyists have engaged
18 in, can you describe generally the kind of
19 activities that your lobbyists have performed on
20 Torch's behalf?

21 A. I don't know that.

22 Q. Okay. To your knowledge, have Torch
23 lobbyists met with legislators in the State of
24 Missouri?

25 A. From my understanding, yes.

1 Q. Okay. I understand.

2 A. So I don't know that.

3 Q. And perhaps my questions weren't specific
4 enough. Do you know if -- I'll make a more general
5 statement to help clarify. Do you know if any
6 lobbyists for Torch have communicated with Missouri
7 legislators to advocate on behalf of Torch?

8 A. Communicate meaning?

9 Q. In any form?

10 A. I know they have talked to them.

11 Q. Okay. Do you know if any lobbyists for
12 Torch have communicated with in any form or fashion
13 with the governor of the State of Missouri on behalf
14 of Torch?

15 A. I don't know that.

16 Q. Do you know if any Torch lobbyists have
17 communicated in any form or fashion with the
18 lieutenant governor of the State of Missouri on
19 behalf of Torch?

20 A. I don't know for sure on behalf of Torch,
21 no.

22 Q. Okay. Is it fair to say that if I ask you
23 a similar question about other office holders in the
24 State of Missouri, you would not be able to answer
25 with confidence?